

Turkey's Withdrawal from the Istanbul Convention

#layda Eskita#ç#o#lu

2021-03-27T13:00:10

As [the 65th session of the UN Commission on the Status of Women](#) (CSW) is in progress, feminists from around the world are shocked by Turkey's sudden decision to withdraw from the [Istanbul Convention](#). The withdrawal was announced with the [Presidential Decision No. 3718](#), published in the Official Gazette on 20th of March, in the small hours. Just a couple of days prior to the presidential decision, Zehra Zümrüt Selçuk, the Minister of Family, Social Services and Labour has pled "*As Turkey, we work day and night with no hesitation based on our principle of zero tolerance for violence during the pandemic ...*" in a [CSW side event hosted by Turkey](#).

82 women were killed in Turkey during the first 82 days of 2021 according to "[An#t Sayaç](#)", an online monument dedicated to commemorate women who lost their lives to domestic violence. For 2020, the number of these femicides was reported as 300, with 179 additional suspicious deaths according to the data compiled by the NGO '[We Will Stop Femicides](#)'. Gender-based violence is a deeply-rooted issue in Turkey. In reaction, the strong and well-organized women's movement has held numerous protests demanding the government to address the issue and to fully implement Istanbul Convention and the domestic [Law No. 6284 to Protect Family and Prevent Violence against Woman](#), enacted pursuant to the Istanbul Convention's obligations.

In contrast to the alarming number of femicides today, 10 years ago, Turkey was the first state to sign and ratify the [Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence](#), better known as the 'Istanbul Convention'. Turkey was not only the first State party to the Convention but was also a leading actor during the negotiations and hosted the launch of the Convention. Recep Tayyip Erdoğan, who was the Prime Minister at the time, welcomed the Convention with [a tweet](#) on 3 June 2011: "*Violence against women is now a 'human rights violation'. The Convention was prepared under the leadership of Turkey*". Following the signature on 11 May 2011, [the law for the approval of the Convention's ratification](#) was adopted unanimously with the votes of the MPs from all parties, AKP, CHP, MHP, and BDP, with 246 votes in favour with one abstaining vote and zero votes against on 24 November 2011. One can't help but wonder: How have things changed so drastically, and what are the implications from a legal perspective?

This blog post aims to briefly provide a further overview of the political context that has changed in the last 10 years and the problematic aspects of the withdrawal decision under domestic law, to discuss the possible consequences of an unconstitutional withdrawal under international law, and lastly, to give some insights from the women's rights activism perspective.

10 Years Later...What Has Happened?

For the past couple of years, the Convention was regularly attacked by small yet politically powerful religious anti-feminist and anti-LGBTI+ groups. Throughout their intense lobbying efforts, these groups have accused the Convention of [corrupting the traditional family structure and advocating for LGBT rights](#). These religious groups have heated the debate in the summer of 2020, which was strongly responded by feminist groups with marches and a [black-and-white-photo challenge in social media](#) that received worldwide support. The Convention also caused disagreements between AKP and some conservative women's rights NGOs, including [KADEM](#), an NGO known for its closeness to the government and vice-chaired by Sümeyye Erdoğan Bayraktar, President Erdoğan's daughter.

Although the political tensions concerning the Istanbul Convention were ongoing, the presidential decision published on 19 March 2021 at midnight was unexpected and [caused quite a stir in the public opinion](#). The rather short [Presidential Decision No. 3718](#) reads as following:

"It is decided that the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence which was signed by Turkey on 11/5/2011 and approved by the Cabinet Decree No. 2012/2816 on 10/2/2012 shall be terminated on behalf of Turkey according to Article 3 of the Presidential Decree No. 9."

Problematic Aspects under Domestic Law

The decision is questionable under a number of aspects. Firstly, the terminology used within the text of the Presidential Decision is confusing. "Fesih", a Turkish word used for "termination", and in certain cases, "denouncement" or "repealing" has been used while "withdrawal" (in Turkish, "çekilme") would have been a more proper term within the context of a multilateral convention.

[Article 80 of the Istanbul Convention](#) allows State parties to denounce the Convention at any time, by means of a notification addressed to the Secretary General of the Council of Europe. However, the same Article also states that the denunciation shall become effective following the expiration of a period of three months after the date of receipt of the notification by the Secretary General. It is also clearly stipulated in [Article 42\(2\) of the Vienna Convention on the Law of Treaties](#), that the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty. Taking these into consideration, the denunciation process has just begun, and based on [Article 80 of the Istanbul Convention](#) the withdrawal process will only be completed after the three-months period has expired.

However, the burning question remains: Can the President trigger the withdrawing process from an international convention by issuing a presidential decision? Is the decision in accordance with domestic law? According to [Article 90\(1\) of the Turkish Constitution](#), the ratification of international treaties shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification. After the Parliament has approved the ratification of the treaty, the President shall approve

and publish, or “ratify and promulgate” it according to [Article 104\(11\)](#). This article regulates the executive powers of the President. Therefore, the President is only vested with executive power, and can only issue presidential decrees on executive matters. In this case, the Istanbul Convention became a part of domestic law when the Grand National Assembly of Turkey passed the ratification law. However, the President cannot repeal a domestic law, which would require legislative functions, that are clearly vested in the Parliament ([Article 87 of the Constitution](#)). This would constitute a violation of the separation of powers through the usurpation of legislative power by the executive, and therefore make the presidential decision concerning the withdrawal, as well as the [Presidential Decree No. 9](#), on which the decision is based, unconstitutional.

In addition, the denunciation of the Istanbul Convention through a presidential decision, without the Parliament having a vote on the matter is at odds with the principle of parallelism of competence and procedure. Indeed, everything shall be dissolved by the same mode in which it is bound together, (*Unumquodque eodem modo quo colligatum est dissolvitur*) which is simply not the case in this withdrawal. The Istanbul Convention was – and according to [Article 90 of the Constitution](#), must be – first adopted by the Grand National Assembly by a law approving the ratification. The Constitution quite clearly stipulates that agreements relating to the rights of individuals shall not be put into effect unless promulgated. In other words, it is the adoption by the Parliament that is the core element and primary condition for ratification. By contrast, the withdrawal decision makes it sound like the Convention was substantively and primarily approved by a Cabinet decree. However, only after the law confirming the ratification passed with unanimity in Parliament, it was simply further approved by the Cabinet Decree No. 2012/2816. Rewinding the procedure based on parallelism, the result of these considerations is again that the withdrawal process should have been initiated with a draft bill for the withdrawal, to be voted in the Grand National Assembly.

Apart from the President taking a decision to withdraw on his own, the underlying Presidential Decree granting such authority in the first place is highly problematic. [Article 3 of the Presidential Decree No. 9](#) gives the President the right to approve, and to “terminate” international treaties via presidential decisions. However, according to [Article 104\(11\) of the Constitution](#), the authority granted to the President is simply to “ratify and promulgate” international treaties, given a prior statutory law approving the ratification has already been enacted. As per [Article 104\(17\) of the Constitution](#), the President may issue presidential decrees on the matters regarding “executive power”. Withdrawing from an international treaty is a matter concerning legislative power primarily, and the Constitution does not allow the President to issue decrees providing the President authority to terminate such treaties in the first place. Moreover, [Article 7 of the Constitution](#) draws a rather clear picture: “*Legislative power is vested in the Grand National Assembly of Turkey on behalf of Turkish Nation. This power shall not be delegated*”. Starting from the early years of the Republic of Turkey, one of the founding principles throughout the development of Turkish constitutional law’s canon has been the principle of parliamentary oversight, as foreseen in [Article 7](#). The act of repealing domestic laws, including, most importantly, the withdrawal from human rights treaties duly put

into effect, via presidential decrees raise serious questions regarding separation of power, and safeguards against arbitrary unilateralism.

What Are the Consequences of the Unconstitutionality under International Law?

Another interesting aspect of the withdrawal decision would be the consequences of this unconstitutionality in international law. To put it in other words, if a state withdraws from an international treaty in a manner that violates its own domestic law, would this take effect in international law? There is no immediate answer to this complicated matter. A similar discussion was raised during [South Africa's attempt to withdraw from the Rome Statute](#) (which was later revoked after the attempt was held to be unconstitutional by the North Gauteng High Court) and yet the gap remains. [Article 46 of the Vienna Convention on the Law of Treaties](#) stipulates that “A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.” In other words, the validity of a treaty may be affected if it has been concluded in a manifest violation of an internal law of fundamental importance. Although [Article 46](#) is silent regarding withdrawals, it could be interpreted that the manifest violation of a fundamentally important rule of internal law (such as the rules on the allocation of powers in the Constitution) could possibly invalidate a state's withdrawal from a treaty. [According to some authors](#), such an interpretation is overdue and necessary to bring the law on treaty withdrawal in parallel with the law on joining treaties.

“Deep Concerns” for Women's Rights in Turkey

Even if the withdrawal procedure would have been perfectly constitutional, this would not have changed the worrying situation. The withdrawal from the Istanbul Convention has been the last and most unsettling step of a systemic and cumulative deterioration of gender equality in Turkey. It is regretful to see that the Presidency's Directorate of Communications shared similarly exclusive, anti-LGBTI+ language with lobbying conservative groups in its [statement](#): “*The Istanbul Convention, originally intended to promote women's rights, was hijacked by a group of people attempting to normalize homosexuality – which is incompatible with Türkiye's social and family values.*” The [over-emphasis on women's roles as mothers](#) and frequent [references to gender roles](#) by politicians, openly [homophobic remarks](#) by public officials, and a clear [avoidance to use “gender-equality” terminology](#) within public policies have been other signs of this backslide in Turkey.

Taking a step back and looking at the matter from the perspective of women's rights activism is crucial. The withdrawal from the Istanbul Convention is seen as a direct attack on women's rights in Turkey, acquired through the relentless fight of the women's movement. Strong [solidarity messages](#) have been shared by feminist collectives from all over the world, yet, challenging days are waiting ahead.

On the one hand, the Istanbul Convention constituted a critical international benchmark and a “gold standard” for legislation and policy to combat all forms of

violence against women and LGBTI+ individuals, which will no longer be a part of Turkish domestic law. On the other hand, the domestic [Law No. 6284 to Protect Family and Prevent Violence against Women](#) is still in force. However, this law entered into force just after Turkey became a State Party to the Istanbul Convention, and it was enacted specifically in accordance with Turkey's obligations under the Convention, making clear references to it within its text. By consequence, the withdrawal from the Convention may have the effect to empty out the text of Law No. 6284 and to hinder the effective implementation of the protective and preventive measures it provides.

Gender-based violence is an escalating human rights crisis in Turkey. While several government officials have [stated](#) that efforts to fight domestic violence such as the 'zero tolerance against violence' policy would be maintained, there is no doubt that the withdrawal is a huge political setback. Unsurprisingly, the [Council of Europe](#), [UN Women](#) and many other international organizations have expressed their concern. Council of Europe Secretary General Marija Pejčinović Burić [stated](#) that Turkey's withdrawal is *"devastating news"*, a *"huge setback"* and *"all the more deplorable because it compromises the protection of women in Turkey, across Europe and beyond"*. However, it is yet to be seen whether this drastic backslide will have concrete political implications for Turkey. Could this be the first alarm bells ringing as Turkey is taking overt and explicit steps to distance itself from the Council of Europe human rights mechanisms? Could the European Convention on Human Rights be next?

Conclusion

From a legal perspective, the withdrawal decision can be interpreted as null and void, based on Turkish constitutional and administrative law and raises many further questions from an international law perspective. Such a withdrawal has been unprecedented within the Council of Europe. Despite the deeply problematic legal aspects of this unexpected decision, chances are that it will have devastating effects on women's security and on the protection of their right to life, as [the "shadow pandemic" of gender-based violence is spreading](#). Resonating with the well-chanted motto of feminist movement, "Istanbul Convention saves lives", and concluding, there is surely a long and challenging path before domestic actors, to organize well and to efficiently use all means of strategic litigation, and the political mobilization.

